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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 CENTRAL DIVISION
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12 FEDERAL TRADE COMMISSION,
13 Plaintiff,

14 v.

15 JASON CARDIFF, et al.,
16 Defendants.
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Case No. ED 5:18-cv-02104-DMG-
PLAx

**[PROPOSED] ORDER FOR
RELEASE OF DEPOSITED
FUNDS**

1 Having considered non-party Jacques Poujade and True Pharmastrip's
2 Motion for Return of Deposited Funds, and FOR GOOD CAUSE SHOWN, THE
3 COURT HEREBY ORDERS THAT the Receiver shall promptly return the
4 \$1,205,984.00, plus interest, that the Receiver received from Spertus, Landes &
5 Umhofer, LLP, on August 27, 2019.

6 On October 10, 2018, the FTC filed a civil enforcement action against
7 Jason Cardiff, his wife Eunjung Cardiff, and several of the couple's companies,
8 alleging violations of various federal consumer protection laws. (Dkt. 1.) The
9 FTC's complaint alleges that it is brought under Section 13(b) of the FTC Act,
10 15 U.S.C. § 53(b); Section 5 of the Restore Online Shoppers' Confidence Act
11 ("ROSCA"), 15 U.S.C. § 8404; Section 918(c) of the Electronic Fund Transfer
12 Act ("EFTA"), 15 U.S.C. § 1693o(c); and Section 6 of the Telemarketing and
13 Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15
14 U.S.C. § 6105 (Dkt. 1, at ¶ 1.)

15 The only authority cited in complaint for the Court's power to grant
16 monetary relief, including restitution and disgorgement of ill-gotten gains, was
17 Section 13(b) of the FTC Act. (Dkt. 1, at ¶ 129.) With its complaint, the FTC
18 filed an application for a TRO with asset freeze provisions, arguing that they
19 were "necessary to ensure that assets are available to make restitution to injured
20 consumers." (Dkts. 5, at 61.) Again, the only authority for the asset freeze cited
21 in the FTC's TRO application is Section 13(b) (ECF No. 5, at 21-22), which is
22 also the only authority cited by the Court in its order granting the TRO (ECF No.
23 29, at 4).

24 On June 17, 2019, the FTC filed a motion seeking to hold non-party
25 Jacques Poujade in contempt of court for violating the TRO's asset freeze
26 provision. (Dkt. 134.) The FTC alleged that, at the time the TRO was entered,
27 Jason Cardiff was a signatory on a True Pharmastrip business checking account
28 in Canada, making the funds in the account at that time subject to the TRO's

1 asset freeze. The FTC further alleged that when, shortly after the TRO was
2 entered, Mr. Poujade transferred \$1,560,000 CAD from True Pharmastrip's
3 business checking account to one of the company's subsidiaries, his actions
4 violated the TRO's asset freeze. (*See, e.g.*, Dkt. 180, at 16, ¶ 57.) On August 27,
5 2019, the Court then ordered that the funds be deposited with the Receiver for
6 safekeeping, which True Pharmastrip did. (*See* Dkt. 237, at 4-5; Dkt. 238, at 3.)

7 In *AMG Capital Managment, LLC v. FTC*, 141 S. Ct. 1341 (2021), the
8 Supreme Court unanimously held that Section 13(b) of the FTC Act "does not
9 authorize the Commission directly to obtain court-ordered monetary relief,"
10 including restitution and disgorgement of ill-gotten gains. Based on *AMG*, the
11 Ninth Circuit recently vacated a preliminary injunction entered in this case,
12 which froze the assets of non-party VPL Medical, Inc. "to preserve assets
13 pending a final judgment that could include equitable monetary relief" under
14 Section 13(b) of the FTC Act. *See FTC et al. v. VPL Medical Inc., et al.*, 2021
15 WL 1664404, at *1 (9th Cir. Apr. 28, 2021). Like the VPL Medical preliminary
16 injunction, the only authority for the TRO covering True Pharmastrip's funds
17 (the Deposited Funds) was Section 13(b). (*See* Dkt. 29, at 4; *see also* Dkt. 352,
18 at 7; Dkt. 370, at 14; Dkt. 389, at 3.) Thus, under the Ninth Circuit's decision in
19 *FTC v. VPL Medical*, which is now law of the case, the TRO that the Court used
20 to hold True Pharmastrip's funds is not valid.

21 The FTC now resists the clear implications of the Ninth Circuit's rulings
22 and *AMG* by arguing that, because it won summary judgment against the
23 Defendants on Count XIII, which alleges a violation of ROSCA, it can seek
24 monetary relief against the Cardiffs under Section 19 of the FTC Act, which the
25 FTC claims is incorporated by reference into ROSCA. (Dkt. 574, at 17.)
26 However, the FTC cannot file a civil action or seek monetary relief under Section
27 19 of the FTC Act unless it has first "issued a final cease and desist order" to the
28 defendant, which it has not alleged it did in this case. *See* 15 U.S.C. § 57b(a)(2),

1 (b), and the FTC has never alleged that it issued a final cease and desist order in
2 this case. Without any such allegation anywhere in FTC's complaint, the TRO
3 application, the TRO itself, or the FTC's motion for summary judgment, the
4 TRO and Preliminary Injunction could not be based on a ROSCA violation. The
5 FTC has neither alleged nor proved a precondition for filing a civil action
6 seeking monetary relief for a violation of ROSCA, and it cannot now invoke
7 Section 19's authority now to save the TRO.

8 The Receiver must now promptly return the Deposited Funds to the firm
9 that deposited them, which is the Spertus, Landes & Umhofer, LLP attorney-
10 client trust account.

11 IT IS SO ORDERED.

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13 DATED: _____

HON. DOLLY M. GEE
UNITED STATES DISTRICT JUDGE